



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
 REGION 5
 77 WEST JACKSON BOULEVARD
 CHICAGO, IL 60604-3590

JUN 11 2013

REPLY TO THE ATTENTION OF:
 WW-16J

Scott A. Hans, Chief
 Regulatory Branch
 Department of the Army
 Pittsburgh District Corps of Engineers
 William S. Moorhead Federal Building
 1000 Liberty Avenue
 Pittsburgh, Pennsylvania 15222-4186

Re: 2001-1542, American Energy Corporation, Inc.-Century Mine Coarse Refuse Disposal Area

Dear Mr. Hans:

The United States Environmental Protection Agency has received the subject public notice issued on April 22, 2013 and the Section 404/401 Permit Application (permit application) dated February 2013. EPA reviewed the public notice and permit application and offers the following comments based on our review.

Direct Impacts

The applicant, American Energy Corporation, Inc. (AEC), a subsidiary of Murray Energy Corporation, proposes to fill 221 linear feet of ephemeral streams and 3,002 linear feet of intermittent streams, for a total of 3,223 linear feet of stream impacts to tributaries of Long Run. Long Run (Piney Creek subwatershed) is approximately 3.6 miles long and flows northeasterly from south of New Castle, Ohio to Piney Creek near AEC's Century mine. This stretch of Long Run has been designated by the Ohio Environmental Protection Agency (OEPA) as Exceptional Warmwater Habitat (EWH) according to the Belmont County Soil and Water Conservation District.¹ Piney Creek is approximately 7.2 miles long and flows from Switzerland Lake in a northeasterly direction past the AEC mine in the southern region of the watershed before flowing into Captina Creek.² The Coldwater Habitat (CWH) aquatic life use designation was recommended by OEPA for Piney Creek in 2009.³ Captina Creek has been designated by the OEPA as an Exceptional Warmwater Habitat and Outstanding State Resource Water. EPA considers Captina Creek an Aquatic Resource of National Importance.

¹ Belmont County Soil and Water Conservation District. "Captina Creek Watershed Action Plan." <http://www.belmontswcd.org/WAP.htm>

² Id.

³ Ohio EPA. 2009. Biological and Water Quality Study of the Captina Creek Watershed. EAS 2010-4-1

The purpose of the project is to provide additional coarse refuse storage for AEC's Century Mine in the amount of 5.2 million cubic yards. The project site is located approximately 2.0 miles southeast of Wayne Township, Belmont County, Ohio.

Impacts associated with this project should be included in the proposed Ohio Valley Coal Company 404/401 permit application to construct the No. 3 Impoundment, 2003-1526

Ohio Valley Coal Company (OVCC), also a subsidiary of the Murray Energy Corporation, has proposed to construct a coal slurry impoundment (No. 3 Impoundment) in the Casey Run watershed in Washington Township, Belmont County, Ohio. The project would impact 29,928 linear feet (lft) of headwater streams: 6,426 lft ephemeral, 13,928 lft intermittent, and 9,574 lft perennial. According to OEPA, the *existing* aquatic life use of Casey Run is CWH. Casey Run, like Piney Creek, is a direct tributary to Captina Creek.

EPA continues to object to the Corps issuing a permit for the No. 3 Impoundment project because OVCC has not demonstrated compliance with the 404(b)(1) Guidelines (Guidelines). EPA believes the project will cause significant degradation to Captina Creek and Casey Run; the mitigation package proposed is significantly inadequate, and practicable, less environmentally damaging, alternatives exist.

The original stated purpose of the No. 3 Impoundment is "to provide 16 years of fine and coarse refuse disposal life for coal generated from OVCC's Powhatan No. 6 and AEC's Century underground mines." Subsequently, the applicant provided a cumulative impact assessment dated September 9, 2011 that states the purpose of the No. 3 Impoundment project is to "provide 19 years of fine and coarse refuse disposal life for coal generated from the Powhatan No. 6 mine and AEC's Century mine." In either case, based on an information package that OVCC provided to the resource agencies on January 26, 2011 (information package), Casey Run is not the life-of-mine solution for coarse refuse. The combination of the existing No. 2 Impoundment (on Perkins Run) and No. 3 Impoundment also falls short in capacity for coarse refuse.

Furthermore, OVCC has stated that AEC's separate coarse refuse facility is reaching capacity; however, no information has been submitted to date that identifies the amount of remaining capacity. As mentioned above, it is clear that the required coarse refuse capacity would not only exceed the stated capacity of the proposed No. 3 Impoundment, but would also exceed the capacity of a combination of the proposed No. 3 Impoundment and existing No. 2 Impoundment. This conflicts with the stated project purpose for the No. 3 Impoundment.

In previous correspondence, OVCC has stated that additional locations adjacent to the current AEC coarse refuse disposal area could be considered for supplementary coarse refuse disposal to serve the Century Mine, which might require Section 404 permits. The proposed project, 2001-1542, fits that description.

A letter from you, addressed to OVCC, dated February 29, 2012, states:

OVCC has indicated that the excess coarse material will be disposed of in any combination of adjacent areas to the current Century coarse refuse site. A joint field

review was conducted on December 6, 2011, by the Corps and the Ohio Environmental Protection Agency to assess the amount of aquatic resources within these areas. We are currently processing your delineation to determine the extent and amount of the Corps jurisdiction. **Once the jurisdictional status has been determined on these resources, impacts to these resources should be quantified and included with the overall impacts associated with your current proposal and mitigation measures.**

It is unclear why the Corps has changed its position on this matter. We maintain that the proposed impacts for the expansion of the coarse refuse area at AEC should be incorporated into the overall proposed impacts for the No. 3 Impoundment permit application, because disposal of coarse refuse for the life of AEC's Century Mine is an important component of the stated purpose for the No. 3 Impoundment project.

In conclusion, we object to the Corps issuing a permit for the project as proposed because the impacts associated with the AEC coarse refuse area expansion need to be incorporated into the Impoundment No. 3 permit application. Further, the overall project does not comply with the Guidelines. EPA reserves the right to comment on the technical aspects of any future submittals associated with this component of the No. 3 Impoundment project. Thank you for the opportunity to comment on the public notice. We look forward to discussing this permitting matter with you. Please contact me at 312-886-0236 with any questions you may have.

Sincerely,



Peter Swenson, Chief
Watersheds and Wetlands Branch

cc: Jeromy Applegate, USFWS (via electronic mail)
Ric Queen, OEPA (via electronic mail)